



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- 95077; File No. SR-Phlx-2022-25]

### **Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 4A, Section 12, Terms of Index Options Contracts**

June 9, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 6, 2022, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend certain rule text within Options 4A, Section 12, Terms of Index Options Contracts, related to the listing of options on the Nasdaq-100<sup>®</sup> Volatility Index.

The Exchange also proposes to amend the Short Term Option Series Program within Options 4A, Section 12(b)(4).

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain rule text within Options 4A, Section 12, Terms of Index Options Contracts, related to the listing of options on the Nasdaq-100® Volatility Index ("VOLQ"). The Exchange also proposes to amend the Short Term Option Series Program within Options 4A, Section 12(b)(4). The changes are described below.

**VOLQ**

In 2021, Phlx received approval<sup>3</sup> to list and trade options on VOLQ. Phlx subsequently received approval<sup>4</sup> to amend the calculation of its final settlement price for options on VOLQ. Phlx has issued an Options Trader Alert announcing the launch of VOLQ on June 14, 2022.<sup>5</sup>

Background

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<sup>3</sup> See Securities Exchange Act Release No. 91781 (May 5, 2021), 86 FR 25918 (May 11, 2021) (SR-Phlx-2020-41) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options on a Nasdaq-100 Volatility Index) ("VOLQ Options Approval Order").

<sup>4</sup> See Securities Exchange Act Release No. 93628 (November 19, 2021), 86 FR 67555 (November 26, 2021) (SR-Phlx-2021-56) (Order Approving a Proposed Rule Change To Amend Options 4A, Section 12 Regarding the Calculation of the Closing Volume Weighted Average Price for Options on the Nasdaq-100 Volatility Index in Certain Circumstances) ("Amendment to VOLQ Options").

<sup>5</sup> See Options Trader Alert #2022-16 (<http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA 2022-16>).

VOLQ is a new options index product that would enable retail and institutional investors to manage volatility versus price risk. This index will measure “at-the-money” volatility, a precise measure of volatility used by investors. Unlike other indexes, this proposed novel product isolates at-the-money volatility for precise trading and hedging strategies. This product will provide investors information on volatility index returns by allowing them to observe increases and decreases of the Volatility Index. Specifically, VOLQ options will measure changes in 30-day implied volatility of the Nasdaq-100 Index (commonly known as and referred to by its ticker symbol, NDX). Options on the Volatility Index will be cash-settled and will have European-style exercise provisions.

#### Minimum Increments

The Exchange will list VOLQ options with standard minimum increments of \$0.05 for options trading below \$3.00 and \$0.10 for all other series pursuant to Options 3, Section 3(a).<sup>6</sup> The minimum increments for VOLQ options were set forth in the VOLQ Options Original Filing which stated, “The Exchange proposes to utilize nickel and dime increments for trading the Volatility Index options. The Exchange believes that these trading increments will enable traders to make the most effective use of the product for trading and hedging purposes.”<sup>7</sup> Similarly, the VOLQ Options Approval Order provided, “All options on the Volatility Index will have a minimum increment of \$0.05 for options trading below \$3.00 and \$0.10 for all other series.”<sup>8</sup>

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<sup>6</sup> Phlx Options 3, Section 3(a) provides, “Except as provided in Supplementary Material to Options 3, Section 3 below, all options on stocks, index options, and Exchange Traded Fund Shares trading at a price of \$3.00 or higher shall have a minimum increment of \$.10, and all options on stocks and index options trading at a price under \$3.00 shall have a minimum increment of \$.05.”

<sup>7</sup> See Securities Exchange Act Release No. 89725 (September 1, 2020), 85 FR 55544 at 55549 (September 8, 2020) (SR-Phlx-2020-41) (Notice of Filing of Proposed Rule Change To List and Trade Options on a Nasdaq-100® Volatility Index) (“VOLQ Options Original Filing”).

<sup>8</sup> See VOLQ Options Approval Order at 25920.

The Exhibit 5 attached to the VOLQ Options Original Filing inadvertently noted that VOLQ options would be traded in \$.01 increments.<sup>9</sup> At this time, the Exchange proposes to remove the rule text within Supplementary Material .04 of Options 3, Section 3. The rule text is inconsistent with the VOLQ Options Original Filing and the VOLQ Options Approval. Removing the rule text would avoid confusion since the standard minimum increments specified within Options 3, Section 3(a) would apply. No other change is required to Options 3, Section 3 with respect to VOLQ options.

#### Closing Settlement Period

Phlx noted in the VOLQ Options Original Filing and the Amendment to VOLQ Options that,

[t]he Closing VWAP shall be determined by reference to the prices and sizes of executed orders or quotes in the thirty-two underlying Nasdaq-100® index (“NDX”) component options on Phlx, Nasdaq ISE, LLC and Nasdaq GEMX, LLC markets. Executed orders shall include simple orders and complex orders (excluding out-of-sequence and late trades), however, individual leg executions of a complex order will only be included if the executed price of the leg is at or within the NBBO. The following process is used to calculate the Closing VWAP of the VOLQ options. At the end of individual one-second time observations during a 300 second period of time (the “Closing Settlement Period”) commencing at 9:32:010 on the expiration day (or 2.01 minutes after the open of trading in the event trading does not commence at 9:30:000 A.M. ET), and continuing each second for the next 300 seconds, the number of contracts traded at each price during the observation period is multiplied by that price to yield a Reference Number.

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In the event of a trading halt in one or more options, excluding a halt in all Nasdaq-100 index options, prior to the completion of the Closing Settlement Period, the Exchange would continue to look back for a One Second VWAP prior to looking forward. In the event of a trading halt in all Nasdaq-100 index options, the Exchange would commence the calculation of the settlement window beginning 2:00:01 minutes after the re-opening of trading and publish that value on its website. In this scenario, the Exchange would not look back prior to the trading halt.

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<sup>9</sup> See VOLQ Options Original Filing at Exhibit 5, “.04 All Nasdaq-100® Volatility Index Options shall have a minimum increment of \$.01.”

At this time, Phlx proposes to amend the formatting of the timeframes for the Closing Settlement Period. The Exchange proposes to revise the references to “9:32:010” and “9:30:000” to instead state “9:32:01” and “9:30:00,” respectively. Representing the minutes as two decimals will avoid confusion as to the time intended. Additionally, the Exchange proposes to revise references to “2.01” and “2.00.01” to instead state “two minutes and one second” for clarity. These amendments are intended to conform the rule text and bring clarity to the timeframes.

### **Short Term Option Series Program**

In 2013, Phlx amended the Short Term Option Series Program for equity options within Rule 1012 (currently Options 4, Section 5) to change the number of currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date from thirty to fifty options classes.<sup>10</sup> Further, Phlx also amended the number of Short Term Option Series that the Exchange may open for each expiration date in that class from twenty to thirty.<sup>11</sup> At that time, the Exchange neglected to update the index options rules to make similar changes to the Short Term Option Series Program given that the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options and is not apportioned between equity and index options.

Today, Options 4A, Section 12(b)(4) provides,

The Exchange may select up to thirty (30) currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. In addition to the thirty-option class restriction, the Exchange also may list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each index option class eligible for participation in the Short Term Option Series Program, the Exchange may open up to twenty (20) Short Term Option Series on index options for each expiration date in that class. The Exchange may also open Short Term Option Series that are opened by other securities exchanges

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<sup>10</sup> See Securities Exchange Act Release Nos. 70682 (October 15, 2013), 78 FR 62809 (October 22, 2013) (SR-Phlx-2013-101) (Notice of Filing of Proposed Rule Change Regarding the Short Term Option Series Program); and 71004 (December 6, 2013), 78 FR 75437 (December 11, 2013) (SR-Phlx-2013-101) (Order Granting Approval of Proposed Rule Change Regarding the Short Term Options Program).

<sup>11</sup> Id.

in option classes selected by such exchanges under their respective short term option rules.

At this time, the Exchange proposes to amend Options 4A, Section 12(b)(4) to increase the number of currently listed options classes on which Short Term Option Series may be opened on any Short Term Option Opening Date from thirty to fifty options classes for index options. Additionally, the Exchange proposes to amend the number of Short Term Option Series the Exchange may open on index options for each expiration date in that class from twenty to thirty. These amendments would align the limitations within Options 4A, Section 12(b)(4) with those currently within Supplementary .03(a) to Options 4, Section 5.

As noted above, this amendment will not result in a greater number of listings in the Short Term Option Series Program because the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options and is not apportioned between equity and index options. Amending Options 4A, Section 12(b)(4) to conform to the limitations provided within Supplementary .03(a) to Options 4, Section 5 will avoid confusion by making clear the aggregate limitations within equity and index options for listing Short Term Option Series. Today, Cboe has similar limitations within its equity and index Short Term Option Series Program.<sup>12</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>14</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

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<sup>12</sup> See Cboe Exchange, Inc. Rules 4.5 and 4.13.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

Removing inadvertent rule text describing minimum increments is consistent with the Act and will avoid confusion. The minimum increments for VOLQ options were set forth in the VOLQ Options Original Filing and the VOLQ Options Approval. The standard minimum increments specified within Options 3, Section 3(a) would apply to VOLQ options.

Amending the formatting of the timeframes for the Closing Settlement Period is consistent with the Act. The proposed amendments to the timeframes will conform the rule text and bring clarity to the rule.

In 2013, Phlx amended the Short Term Option Series Program for equity options within Rule 1012 (currently Options 4, Section 5) to change the number of currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date from thirty to fifty options classes.<sup>15</sup> Further, Phlx also amended the number of Short Term Option Series that the Exchange may open for each expiration date in that class from twenty to thirty.<sup>16</sup> At that time, the Exchange neglected to update the index options rules to make similar changes to the Short Term Option Series Program given that the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options and is not apportioned between equity and index options. Amending Options 4A, Section 12(b)(4) to conform to the limitations provided within Supplementary .03(a) to Options 4, Section 5 will avoid confusion by making clear the aggregate limitations within equity and index options for listing Short Term Option Series. Also, aligning the limitations within Options 4A, Section 12(b)(4) with those currently within Supplementary .03(a) to Options 4, Section 5 will not result in a greater number of listings in the Short Term Option Series Program because the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options and is not apportioned

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<sup>15</sup> See note 10 above.

<sup>16</sup> See note 10 above.

between equity and index options. Today, Cboe has similar limitations within its equity and index Short Term Option Series Program.<sup>17</sup>

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Removing inadvertent rule text describing minimum increments does not impose an undue burden on competition because it will avoid confusion for investors.

Amending the formatting of the timeframes for the Closing Settlement Period does not impose an undue burden on competition, rather the amendment will conform the rule text and bring clarity to the rule.

Finally, amending Options 4A, Section 12(b)(4) to conform to the limitations provided within Supplementary .03(a) to Options 4, Section 5 will avoid confusion by making clear the aggregate limitations within equity and index options for listing Short Term Option Series. Also, aligning the limitations within Options 4A, Section 12(b)(4) with those currently within Supplementary .03(a) to Options 4, Section 5 will not result in a greater number of listings in the Short Term Option Series Program because the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options and is not apportioned between equity and index options. Today, Cboe has similar limitations within its equity and index Short Term Option Series Program.<sup>18</sup>

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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<sup>17</sup> See note 12 above.

<sup>18</sup> See note 12 above.



### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>20</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>21</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>22</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that it may make these changes to clarify its rules and remove any ambiguity before the planned June 14, 2022 launch of VOLQ options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>23</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>23</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2022-25 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2022-25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2022-25, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022-12840 Filed: 6/14/2022 8:45 am; Publication Date: 6/15/2022]

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<sup>24</sup> 17 CFR 200.30-3(a)(12), (59).